

**ARKANSAS REPORTS
VOLUME 285**

**ARKANSAS
APPELLATE REPORTS
VOLUME 14**

THIS BOOK CONTAINS
ARKANSAS REPORTS
Volume 285

CASES DETERMINED
IN THE
**Supreme Court
of Arkansas**

FROM
February 18, 1985 — April 29, 1985
INCLUSIVE¹

AND
**ARKANSAS APPELLATE
REPORTS**
Volume 14

CASES DETERMINED
IN THE
**Court of Appeals
of Arkansas**

FROM
February 13, 1985 — April 24, 1985
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1985

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ARKANSAS REPORTS

Volume 285

CASES DETERMINED
IN THE
Supreme Court
of Arkansas

FROM
FEBRUARY 18, 1985 — APRIL 29, 1985
INCLUSIVE

CLYDE DICKENS CALLIOTTE
REPORTER OF DECISIONS

MARLO M. BUSH
ASSISTANT
REPORTER OF DECISIONS

PUBLISHED BY THE
STATE OF ARKANSAS
1985

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OF THE
SUPREME COURT OF
ARKANSAS**

**DURING THE PERIOD COVERED
BY THIS VOLUME
(February 18, 1985 —
April 29, 1985, inclusive)**

JUSTICES

JACK HOLT, JR.	Chief Justice
GEORGE ROSE SMITH	Associate Justice
DARRELL HICKMAN	Associate Justice
JOHN I. PURTLE	Associate Justice
ROBERT H. DUDLEY	Associate Justice
STEELE HAYS	Associate Justice
DAVID NEWBERN	Associate Justice

OFFICERS

STEVE CLARK	Attorney General
DONA L. WILLIAMS	Clerk
JACQUELINE S. WRIGHT	Librarian
CLYDE DICKENS CALLIOTTE	Reporter of Decisions

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Rule 21

Rules of the Arkansas Supreme Court and Court of Appeals

OPINIONS

1. All signed opinions of the Supreme Court shall be designated for publication.

2. Opinions of the Court of Appeals may be in conventional form or in memorandum form. They shall be filed with the Clerk. The opinions need not contain a detailed statement of the facts, but may set forth only such matters as may be necessary to an understandable discussion of the errors urged. In appeals from decisions of the Arkansas Board of Review in unemployment compensation cases when the Court finds the decision appealed from is supported by substantial evidence, that there is an absence of fraud, no error of law appears in the record and an opinion would have no precedential value, the order may be affirmed without opinion.

3. Opinions of the Court of Appeals which resolve novel or unusual questions will be released for publication when the opinions are announced and filed with the Clerk. The Court of Appeals may consider the question of whether to publish an opinion at its decision-making conference and at that time, if appropriate, make a tentative decision not to publish. Concurring and dissenting opinions will be published only if the majority opinion is published. All opinions that are not to be published shall be marked, Not Designated For Publication.

4. Opinions of the Court of Appeals not designated for publication shall not be published in the official reports and shall not be cited, quoted, or referred to by any court or in any argument, brief, or other materials presented to any court (except in continuing or related litigation upon an issue such as res judicata, collateral estoppel, or law of the case). Opinions not designated for publication shall be listed in the Arkansas Reports by case number, style, date, and disposition.

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- Bosley v. State*, CR 85-24 (Per Curiam), Pro Se Rule 37
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- Canard v. State*, CR 82-135 (Per Curiam), Pro Se Rule 37
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- Chadwell v. State*, CR 85-49 (Per Curiam), Pro Se Rule 37
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- Coleman v. State*, CR 84-107 (Per Curiam), Pro Se Rule 37
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- Glick v. State*, CR 84-56 (Per Curiam), Pro Se Motion for
Transcript denied March 11, 1985.
- Helloms v. State*, CR 84-100 (Per Curiam), Pro Se Rule 37
Petition denied April 22, 1985.
- Howard v. State*, CR 84-7 (Per Curiam), Pro Se Rule 37
Petition denied April 1, 1985.
- Jackson v. State*, CR 84-69 (Per Curiam), Pro Se Rule 37
Petition denied February 25, 1985.
- James v. State*, CR 83-88 (Per Curiam), Pro Se Rule 37
Petition denied April 22, 1985.
- Jarvis v. State*, CR 84-189 (Per Curiam), Pro Se Rule 37
Petition denied February 18, 1985.
- Knight v. State*, CR 82-85 (Per Curiam), Pro Se Motion for
Transcript denied March 11, 1985.
- Knight v. State*, CR 82-85 (Per Curiam), Pro Se Rule 37
Petition denied March 18, 1985.
- McMiller v. State*, CR 84-221 (Per Curiam), Pro Se Rule 37
Petition denied February 25, 1985.
- Mitchell v. State*, CR 83-108 (Per Curiam), Pro Se Rule 37
Petition denied March 4, 1985.
- Pickens v. State*, CR 83-13 (Per Curiam), Pro Se Rule 37
Petition denied April 22, 1985.
- Potter v. Potter*, 85-25 (Per Curiam), Motion to Supplement
the Record granted April 22, 1985.

- Sawyer *v.* State, CR 84-94 (Per Curiam), Pro Se Rule 37
Petition denied February 25, 1985.
- Southard *v.* State, CR 84-154 (Per Curiam), Pro Se Rule 37
Petition granted in part and denied in part April 1,
1985.
- Thomas *v.* State, CR 85-1 (Per Curiam), Pro Se Motion for
Transcript at Public Expense denied February 25, 1985.
- Vinston *v.* State, CR 81-72 (Per Curiam), Pro Se Rule 37
Petition denied February 18, 1985.
- Ward *v.* State, (Per Curiam), Motion for Rule on the Clerk to
Lodge Transcript denied April 15, 1985.
- Washington *v.* State, CR 82-108 (Per Curiam), Pro Se Rule
37 Petition denied February 18, 1985.
- Webster *v.* State, CR 84-59 (Per Curiam), Pro Se Rule 37
Petition denied without prejudice March 11, 1985.
- Williams *v.* State, CR 85-61 (Per Curiam), Pro Se Rule 37
Petition denied April 29, 1985.
- Wilson *v.* State, CR 83-129 (Per Curiam), Pro Se Motion for
Transcript at Public Expense denied February 18, 1985.
- Wilson *v.* State, CR 83-129 (Per Curiam), Pro Se Rule 37
Petition denied February 18, 1985.
- Wood *v.* State, CR 83-35 (Per Curiam), Pro Se Rule 37
Petition denied March 11, 1985.

APPENDIX
Rules Adopted
and/or Amended
by Per Curiam Orders

**IN RE: AMENDMENT TO RULE 2 OF THE ARKANSAS
RULES OF APPELLATE PROCEDURE.**

686 S.W.2d 778

Supreme Court of Arkansas
Opinion delivered March 18, 1985

PER CURIAM. Rule 2 (a) of the Arkansas Rules of Appellate Procedure is amended so that the following paragraph is added:

9. An order certifying a case as a class action in accordance with ARCP Rule 23.

IN THE MATTER OF THE ARKANSAS BAR
ASSOCIATION: PETITION FOR THE
ADOPTION OF NEW SUPREME COURT RULES
ON PROFESSIONAL CONDUCT*

3-187

687 S.W.2d 118

Supreme Court of Arkansas
Opinion delivered March 11, 1985

Petition for Rehearing; granted in part.

STEELE HAYS, Justice. Our original opinion of April 16, 1984 denied in its entirety the Petition of Messrs. Gill, Stroud and Cloar, acting as an ad hoc committee of the Arkansas Bar Association. A petition for rehearing was filed by Professor Howard W. Brill, urging partial adoption of the petition rather than rejecting it entirely, and a petition for reconsideration was filed by the petitioners suggesting that we had made a significant miscalculation of the committee's position with respect to the rule changes proposed by the petitioners.

By our Per Curiam order of June 4, 1984, this proceeding remained open for further discussion and pleadings by interested parties and in order to afford the committee an opportunity to respond more fully.

Pursuant to the Per Curiam order the case was scheduled for oral argument with John P. Gill appearing for the petitioners and Jerry Cavaneau, Chairman of the Committee on Professional Conduct, appearing for the committee. At oral argument it developed that while the committee was decidedly opposed to some of the proposed changes, it was favorably inclined toward others, and as a result, the two groups were requested to meet and determine areas of agreement. That has been done and we are provided with a detailed report of the committee's position, incorporating into new rules those features of the petitioners' proposals with which the committee agrees. We are asked to approve the new rules, numbering twenty-two in all.

*[Original opinion appears at 282 Ark. 604 (1984).]

In summary, the changes provide that an attorney, upon receiving notice of a complaint filed against him, may request a hearing before any vote is taken by the committee, or may wait to see what action the committee takes upon the complaint and any supporting documents and affidavits, and then request a hearing if he/she is dissatisfied with the action taken. In other words, the attorney's right to a subsequent hearing is preserved. [See Rule 5(2)(B)(1).] The committee believes this change meets a major objection of the petitioners to current procedures.

The changes include a letter of warning, not a disciplinary action and one which shall be confidential, not heretofore provided for. [See Rule 5(2)(B)(2).] On this point, we note that under existing practice, the letters of reprimand issued by the committee do not state the reason for such reprimand. A brief statement of the grounds included on the information copy forwarded to us would be helpful to this court and we ask the committee to incorporate this practice in the future.

Provision is also made for a suspension by the committee, not now authorized by the rules. [See Rule 5(2)(B)(4).]

The proposed changes authorize the Executive Secretary, when instructed by the committee, to notify the appropriate prosecuting attorney of any evidence of a crime which comes to the attention of the committee through its investigation or hearing of complaints. [See Rule 10(A).]

Other provisions include the maintenance of a public record by the Clerk of the Supreme Court of all licensed attorneys, those no longer licensed, and the reasons such license is no longer held, e.g., deceased, suspension, disbarment, surrender, fee delinquency, disability, retirement, et cetera. [See Rule 10(B).]

Rule 11 contains requirements for an attorney who becomes disbarred, suspended, or surrenders his license to notify his clients in writing within twenty days regarding arrangements for other representation, the delivery of any

papers or property to the client, the refunding of any unearned fees, in the case of pending litigation, filing with the court notice to opposing counsel, and other steps necessary to the orderly withdrawal from practice. Non-compliance is subject to contempt proceedings.

A copy of the proposed rules promulgated by the committee, with changes shown by underlining, is attached to this opinion as an appendix. Rule 15 is deleted at this time.

We agree with the committee's recommendations and approve their adoption. We express our special gratitude to the petitioners, Messrs. Gill, Stroud and Cloar on behalf of the Arkansas Bar Association and the Arkansas Bar Foundation, to the members of the Committee on Professional Conduct and to Professor Brill for their continuing interest in improving the procedures under which lawyers practice their profession and account for their conduct.

Rehearing granted in part.

**PROPOSAL OF SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT**

**RULES OF THE COURT
REGULATING PROFESSIONAL CONDUCT OF
ATTORNEYS AT LAW**

RULE 1

SCOPE OF RULES

The following rules are for the regulation of professional conduct of attorneys at law and shall apply to all complaints against attorneys filed hereafter. Every attorney now licensed shall be a member of the Bar of this State, and subject to these rules, or those hereafter made. To the extent that former rules are in conflict, they are hereby overruled and superseded.

RULE 2

**CANONS OF ETHICS ADOPTED —
VIOLATIONS DISCIPLINE**

The Code of Professional Responsibility (the "Code") was adopted by the American Bar Association on August 12, 1969. This Court adopted the Code by Per Curiam Order dated February 23, 1970, and, except to the extent it has been or may be amended by this Court, this Code shall be the standard of conduct of attorneys at law. Any attorney who violates any provision of the Code, or these Rules, shall be dealt with as provided herein.

RULE 3

COMMITTEE APPOINTED — QUORUM

The present Supreme Court Committee on Professional Conduct shall continue. The Committee will consist of seven members which shall be appointed by the Court to assist the Court in enforcing these Rules. The present Committee members shall continue to serve their present

terms. Five members of the Committee shall be lawyers, one from each Congressional District and one from the State at large, and shall be appointed for seven-year terms. The other two members shall not be lawyers, shall be selected from the State at large, and shall be appointed for four-year terms. The Committee shall elect one of its members as Chairman and another as Secretary and shall adopt rules regarding its procedure. A majority shall constitute a quorum.

RULE 4

COMMITTEE AUTHORIZED TO ISSUE SUMMONSES AND SUBPOENAS, DISOBEDIENCE THEREOF, CONTEMPT OF COURT

The Committee shall provide for its use a seal of such design as it may deem appropriate and, in the performance of duties imposed by the Rules of this Court, and by its own regulations in aid of the Court's Rules, shall have the authority to issue summonses for any person or subpoenas for any witness, including the production of documents, books, records, or other evidence, directed to any sheriff or state police officer within the State, requiring the presence of any *person* or the attendance of any witness *before the Committee for the purpose of testimony, or in furtherance of investigation*. Such process shall be issued under the seal of the Committee and be signed *by the Chairman, Secretary, or by the Executive Secretary thereof*. Disobedience of any Committee order, summons or subpoena, or refusal to appear or testify shall be regarded as contempt of the Supreme Court.

RULE 5

EXECUTIVE SECRETARY AUTHORIZED

(A) *Executive Secretary*

(1) *The Committee shall have, and is hereby granted authority to employ, an Executive Secretary who shall not be a member of the Committee, and shall have no vote on any matter presented to the Committee for decision.*

The Executive Secretary may be paid such reasonable salary and expenses as may be deemed necessary and appropriate by the Committee, payable from funds allotted the Committee. The salary and expenses shall be subject to the approval of the Court.

(2) *The Executive Secretary shall serve at the will of the majority of the Committee, and shall devote his full time and effort to promptly and efficiently receive, investigate, and process complaints and perform such other duties as are required by these Rules, or by the Committee.*

(B) *Duties of the Executive Secretary*

(1) It shall be the duty of the Executive Secretary to receive all complaints against any member of the Bar, oral and written, to interview complainants, assist them in the preparation of a detailed complaint in affidavit form pursuant to the Rules of the Committee, and to conduct such additional investigation into the facts as may be required. The Executive Secretary shall then furnish to the attorney complained against a copy of the formal complaint and advise the attorney that he may file a written response in affidavit form with any supporting evidence desired. *He shall also advise that the attorney may request a hearing before any vote is taken by the Committee and that, in the absence of such request, the file will be sent to the Committee for vote by ballot as provided in these Rules, with the attorney's right to a subsequent hearing to be preserved, should he be dissatisfied with the ballot vote.* At such time as the Executive Secretary has received from the attorney a written response, or has given the attorney at least ten days in which to file a written response, he shall prepare seven copies of the complaint, the response, and exhibits, if any, and such other information, memoranda, and recommendations which he may have prepared and send a copy to each member of the Committee.

(2) Where the attorney has requested a hearing, no ballots shall be sent, and the matter shall be set for hearing to be conducted under the rules for public hearings. With all other files, the Executive Secretary shall submit to

each Committee member a written ballot to be filled out and returned to the Executive Secretary. Said ballot shall contain appropriate spaces for (a) the signature of the Committee member, (b) the date, (c) the member's vote on the action to be taken on the complaint, and (d) for additional comments, if any.

The Committee is authorized to warn (which is not considered disciplinary and which shall be confidential), to issue letters of caution or reprimand, to suspend, or to take other action as authorized by these Rules. If the majority of the Committee returns written ballots voting to take no action, the complaint shall be placed in the closed files. If the vote is to warn, an appropriate letter shall be sent to the attorney and the complainant notified. If a majority of the Committee returns written ballots to caution, reprimand, or suspend the attorney without a hearing, the attorney shall be notified of the findings and vote of the Committee, and be advised that he has the right, upon written request within twenty days, to a hearing before the Committee. The attorney shall also be advised that in the absence of a request for a hearing, such findings and order of the Committee will be entered in the files of the Committee and will be filed as a public record in the office of the Clerk of the Supreme Court. If a hearing is requested, the Chairman will be so notified, the written ballots will have no effect or force, and the hearing will be granted upon notice to the attorney.

(3) If a majority of the Committee returns written ballots voting for a formal hearing, the Chairman will be so notified, and the procedures set forth in the Rules of the Committee for formal hearings will be followed. The Committee is hereby authorized to take action by written ballot, subject to the requirements and limitations set forth above.

(4) In the event a majority of the Committee voted to take no disciplinary action against an accused attorney or to warn the attorney, the Executive Secretary shall so notify the complainant and accused attorney and shall file a monthly report of such cases *by number only* as a

public record in the office of the Clerk of the Supreme Court. Informal complaints upon which no action is taken need not be included in the report, except for a statement of the number received. If a majority of the Committee votes to caution, reprimand, or *suspend* an attorney following a formal hearing, or in the absence of a request for a hearing by the accused attorney as provided herein, then the Committee shall have the Executive Secretary notify the complainant of the specific action taken against the attorney and file a copy of the letter of caution, reprimand, or *suspension* as a public record in the office of the Clerk of the Supreme Court.

(5) Except for the public hearings and filings specified in these Rules, the Executive Secretary and members of the Committee shall keep confidential the activities and files of the Committee, unless it is necessary to divulge information for disbarment suit purposes, or for release of statistical data, or if the attorney about whom an inquiry is made waives the confidentiality of the information in writing. Nevertheless, any proceeding at which the testimony of witnesses is being taken under oath shall be open to the public. At the end of such proceedings, the Committee may hold an executive session to deliberate upon any disciplinary action to be taken. Its decision shall be announced immediately, with a statement of the votes of the individual members if the decision is not unanimous. Any letter of caution, reprimand, or *suspension* shall be made public immediately after its release to the attorney being cautioned, reprimanded, or *suspended*. Monthly filings will also be made as a matter of public record, as directed earlier in this Rule.

RULE 6

The Executive Secretary may attend and, at the request of the Committee, act as counsel in presenting testimony and other evidence in the event a hearing is held by the Committee on any complaint.

RULE 7

COMPLAINTS INVESTIGATED — COMMITTEE
MAY FILE COURT COMPLAINTS

(A) The Committee shall investigate all complaints of professional misconduct that may be brought to its attention in the form of an affidavit, or in respect of which any member of the Committee may have information, and shall give the attorney involved an opportunity to explain or give the attorney involved an opportunity to explain or refute the charge. If the Committee finds that there is a reasonable ground to believe that the attorney has been guilty of professional misconduct, it may *warn*, caution, reprimand, or *suspend* the attorney; or with the consent of the attorney and the approval of the Arkansas Supreme Court, the attorney may surrender his license upon the conditions agreed to by the Committee and the attorney; or it may cause a complaint in writing to be prepared which shall set forth the specific facts constituting the alleged misconduct, and serve a copy thereof on the attorney against whom the charge is made.

FILED IN EITHER CIRCUIT OR CHANCERY
COURT — NOTICE OF TRIAL — TRIAL BEFORE
JUDGE OR CHANCELLOR

(B) Such complaint shall be filed with the Clerk of the Circuit or Chancery Court of the county in which the accused attorney resides, or in which the alleged offense was committed; and reasonable notice of the time of trial shall be given of not less than twenty days, which trial shall be had before the Circuit Judge or Chancellor, without a jury.

PUNISHMENT IF GUILTY — DISMISSAL IF NOT

(C) If the Judge or Chancellor finds, upon the hearing before him, that the attorney has been guilty of professional misconduct, he shall reprove, reprimand, suspend, or disbar such attorney as the testimony may warrant. If the Judge or Chancellor finds that the complaint of the Committee is not sustained by the evidence, the proceedings shall be dismissed.

VOLUNTARY SURRENDER OF LICENSE

(D) No petition to this Court for Voluntary surrender of license by an attorney shall be granted until referred to the Committee on Professional Conduct and the Committee's recommendations received by this Court.

RULE 8**APPEAL BY EITHER PARTY — HEARD DE NOVO**

(A) Either the Committee or the attorney defendant may appeal to the Supreme Court from the action taken by the Judge or Chancellor. On appeal, the matter shall be heard de novo upon the record made before the trial judge, and this Court shall pronounce such judgment as in its opinion should have been pronounced below.

NOTICE OF APPEAL

(B) Notice of appeal and perfection of appeal shall be in accordance with applicable statutes and Rules of this Court governing appeals in civil matters, but the order by the Circuit Judge or Chancellor shall remain effective until judgment by this Court is pronounced. If no appeal be perfected within the time allowed and in the manner provided, the order of the Judge or Chancellor shall be final and binding on all parties.

APPEAL BY DEFENDANT — NOTICE TO COMMITTEE

(C) Notice of appeal shall be served in writing upon the Chairman or Secretary of the Committee if the appeal be taken by the defendant attorney, and upon such attorney if the appeal be taken by the Committee.

RULE 9**PRIVILEGE AND IMMUNITY**

(A) All communications, complaints, testimony, and evidence of any nature filed with, given to or given before the

Committee, or to any of its employees and agents performing their duties, based upon a complaint charging an attorney with professional misconduct, as well as all actions thereon and activities growing therefrom, are absolutely privileged, and, except for perjury, no suit at law, civil, or criminal, predicated thereon may be instituted, nor may any suit at law, civil or criminal, be filed against a member of the Committee for action taken by the member in good faith in the performance of the member's duties.

(B) The Committee is authorized to request the appropriate prosecuting authorities to seek to obtain immunity from criminal prosecution for a reluctant witness, using procedure outlined in Act 561 of 1973; Ark. Stat. Ann. 28-531 et seq. (Repl. 1979).

RULE 10

NOTIFICATION OF CRIMES

(A) *When instructed by the Committee, the Executive Secretary shall notify the appropriate prosecuting attorney of any evidence of a crime presented to the Committee in connection with its investigation or hearing of the complaint.*

RECORD OF LICENSED ATTORNEYS

(B) *It shall be the duty of the Clerk of the Arkansas Supreme Court to maintain a public record of licensed attorneys in the State of Arkansas and a list of all attorneys no longer licensed and the reasons therefor, e.g., deceased, suspended, disbarred, surrender of license, fee delinquent, disabled, or retired.*

RULE 11

COMPLIANCE WITH DISCIPLINE AND NOTIFICATION OF AFFECTED PARTIES

(A) *In every case in which an attorney is disbarred, suspended, or surrenders his license, the attorney shall*

within twenty days of the disbarment, suspension, or surrender:

(1) *Notify all of his clients in writing and any counsel of record in pending matters that he has been disbarred, or suspended, or surrendered his license;*

(2) *In the absence of co-counsel, notify all clients to make arrangements for other representation, calling attention to any urgency in seeking the substitution of another attorney;*

(3) *Deliver to all clients being represented in pending matters any papers or property to which they are entitled, or notify them and co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property;*

(4) *Refund any part of any fees paid in advance that have been earned.*

(5) *File with the Court, agency, or tribunal before which any litigation is pending a copy of the notice to the opposing counsel, or adverse parties if no opposing counsel;*

(6) *Keep and maintain a record of the steps taken to accomplish the foregoing;*

(7) *File with the Clerk of the Supreme Court and the Committee a list of all other state, federal, and administrative jurisdictions to which he is licensed or admitted to practice. Upon such filing, the Clerk of the Supreme Court shall notify those entitled of the disbarment, suspension, or surrender.*

(8) *File an affidavit with the Committee that he has fully complied with the provisions of the order and completely performed the foregoing or a full explanation of the reasons why the provisions have not been fully complied with. Such affidavit shall also set forth the address where*

communications may thereafter be directed to the respondent.

(9) Failure to comply with this Rule shall subject the individual to contempt of the Supreme Court.

RULE 12

LICENSE FEE PROVIDED — WHEN PAYABLE

A license fee is hereby imposed by this Court to be fixed annually upon each *attorney licensed to practice* law in this State, to be paid to the Clerk of this Court. The amount shall be payable January 1 of each year, and must be paid not later than March 1. Funds thus realized shall be used *as ordered by the Supreme Court.*

RULE 13

EXPENSES OF COMMITTEE PROVIDED FOR

From the funds created under Rule 12, members of the Committee shall be entitled to receive their travel and hotel expenses, reimbursement for postage, stationery, communications, an attendance allowance, and other incidental expenses, including stenographic bills, and court costs chargeable against them. All such items shall be paid by the Clerk of this Court by check on such fund, signed by the Clerk and countersigned by the Chief Justice. Accounts must be itemized and certified by the Chairman, Secretary, or the Executive Secretary of the Committee as true and correct.

RULE 14

SUSPENSION FOR FAILURE TO PAY FEE — NOTICE OF DELINQUENCY REINSTATEMENT — HOW

(A) Suspension for Failure to Pay Fee. Failure to timely pay the annual license fee herein provided shall automatically suspend such delinquent lawyer from the practice. Notice of delinquencies shall be given by the Clerk of this Court to the delinquent, and to the Judge of the

Circuit and Chancery Courts of the district of the delinquent's residence, and a list of all delinquents shall be posted in the office of the Clerk of this Court. Where delinquency is for no more than three years, reinstatement may be had by the payment of all such delinquent dues, and a penalty of \$100. (Delinquency in a given year dates from March 2 of that year.) If delinquency is for more than three years, application for reinstatement must be made on a form supplied by the Clerk and accompanied by a tender of all unpaid dues and penalty.

(B) *Reinstatement.* Any such application for reinstatement and any other application for reinstatement shall be accompanied by the payment of an application fee of \$50.00. All applications for reinstatement will be referred to the State Board of Law Examiners for investigation and recommendation and the taking of a new examination may be required by the Board. Every application for reinstatement shall be processed and investigated by the Secretary of the Board and the Board of Law Examiners is authorized to pay said Secretary a fee of \$50.00 for making such investigation.

RULE 15

DISPLAY OF LICENSE

All attorneys shall display in their office their license to practice law. Collage, lamination, and etchings of the license are permitted. The Committee may authorize upon specific request, other types of license display. Failure of an attorney to display his license as required by this Rule shall automatically suspend such attorney from the practice of law, and be grounds for such other discipline as may be administered by the Committee. The attorney will be automatically reinstated upon proof of display of license as required by these Rules.

RULE 16

DISBARMENT OR SUSPENSION IN OTHER STATES

No person shall be admitted to practice law in this State who has been disbarred *or suspended* from the practice of law in any other state, and the disbarment *or suspension* of any person from the practice of law in any other state shall operate as a disbarment *or suspension* of such person from the practice of law in this State under any license, issued to such person by this Court prior to his disbarment or suspension in such other state. Whenever any member of the Bar of this Court shall have been disbarred or suspended by judgment of any court of record held outside of this State or by any United States Court held within this State, such judgment, upon filing of an authenticated copy thereof in this Court, shall be deemed prima facie grounds for disbarment or suspension, as the case may be, of such attorney by this Court, and, unless good cause for any other action be shown, a like order shall be entered by the Court.

RULE 17

CONVICTION OF FELONY OR INFAMOUS CRIME

If an attorney has been convicted of a felony or infamous crime under the laws of any State or of the United States, a charge may be made by complaint filed by the Committee with the Clerk of a Court of proper venue under these Rules. A time shall be fixed for a hearing with reasonable notice of not less than twenty days given to the accused attorney. A certified copy of the judgment of conviction of an attorney shall be conclusive evidence of his guilt of the crime for which he has been convicted, in any disciplinary proceeding instituted against him based on the conviction. The sole issue to be determined shall be whether the crime warrants discipline and, if so, the extent thereof. The attorney may not offer evidence inconsistent with the essential elements of the crime for which he was convicted. An appeal may be taken in accordance with these Rules.

RULE 18

REPORTING CRIMINAL CONVICTION

All prosecuting attorneys and judges participating in or presiding over a hearing in which an attorney is convicted of, pleads guilty to, or pleads nolo contendere to, a crime which is a Class A misdemeanor or greater offense, shall have the duty to report such conviction or plea to the Executive Secretary.

RULE 19

INACTIVE STATUS

(A) Temporary Transfer to Inactive Status. The Committee is authorized to temporarily transfer an attorney to inactive in the event that:

(1) The attorney has been judicially declared incompetent; or

(2) The attorney has been involuntarily committed due to incapacity or disability; or

(3) The attorney has alleged incapacity during the course of a disciplinary proceeding against him; or

(4) The attorney is found by the Committee to be culpable of habitual drunkenness or drug use substantially affecting the attorney's fitness to practice law; or

(5) The attorney is found by the Committee to have appeared in Court while under the influence of alcohol or drugs; or

(6) The attorney is found by the Committee to be unfit to practice law due to mental infirmity whether or not he has been judicially declared incompetent.

(B) Hearing. The Committee may vote by ballot as provided in Rule 5, on the issue of temporary transfer to

inactive status or reinstatement due to an event described in subsection (A)(1), (2), and (3) above. All other temporary, and all permanent transfers of an attorney to inactive status shall be made only after hearings initiated by the Executive Secretary or others and conducted in the same manner as other disciplinary proceedings. The Committee for good cause shown may order the respondent to submit to a medical examination by a Committee-appointed expert.

(C) No attorney shall be entitled to practice while on inactive status. Upon a transfer to inactive status, the Committee shall take steps to notify interested parties as may be appropriate under the circumstances.

(D) Reinstatement. The Committee may reinstate an attorney to active status upon a showing that the disability has been removed and the attorney is fit to resume the practice of law.

(E) Waiver of Doctor-Patient Privilege. The filing of a petition for reinstatement shall be deemed a waiver of the doctor-patient privilege regarding the disability. Raising the defense of current mental or physical disability by one who is the subject of a disciplinary proceeding also constitutes a waiver of the doctor-patient privilege.

RULE 20

JUDGES TO REPORT ATTORNEYS UNDER INFLUENCE OF ALCOHOL OR DRUGS

All trial judges have the duty to and shall report to the Committee any attorney appearing before them who, in the trial judge's opinion, is under the influence of alcohol or drugs.

RULE 21

FEDERAL DISCIPLINARY HEARINGS

The Executive Secretary may act as counsel, and the Committee as the disciplinary agency, when so requested by

a Federal Judge under Rule X of the Uniform Federal Rules of Disciplinary Enforcement, adopted by the United States District Courts of Arkansas on May 1, 1980. Any additional expense incurred in the processing of such a federal complaint will be paid from the funds arising from the assessments levied under Rule XI of the Uniform Federal Rules. When final action is taken upon a federal complaint, a report of that action will be made to the Federal Judge who referred the matter, and the Committee may also furnish to the Federal Judge any other information from its files necessary to fulfill its duties as counsel.

RULE 22

RULES SUPPLEMENTAL TO STATUTES

These Rules shall not be deemed exclusive of, but as supplemental to the statutes of the State of Arkansas not in conflict herewith. To the extent that prior statutes are in conflict with these Rules, they are hereby superseded.

Appointments to Committees

**IN RE: COMMITTEE ON
CIVIL JURY INSTRUCTIONS**

**Supreme Court of Arkansas
March 25, 1985**

PER CURIAM. The following lawyers are added to the
Committee on Civil Jury Instructions:

**H. David Blair, Batesville.
John C. Everett, Prairie Grove.
James H. McKenzie, Prescott.
Floyd M. Thomas, Jr., El Dorado.
Tilden P. Wright, III, Fayetteville.**

**ARKANSAS
APPELLATE
REPORTS
Volume 14**

**CASES DETERMINED
IN THE
Court of Appeals
of Arkansas**

**FROM
FEBRUARY 13, 1985 — APRIL 24, 1985
INCLUSIVE**

**CLYDE DICKENS CALLIOTTE
REPORTER OF DECISIONS**

**MARLO M. BUSH
ASSISTANT
REPORTER OF DECISIONS**

**PUBLISHED BY THE
STATE OF ARKANSAS
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1985

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JUDGES AND OFFICERS OF THE COURT OF APPEALS OF ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME.
(February 13, 1985 —
April 24, 1985, inclusive)

JUDGES

GEORGE K. CRACRAFT	Chief Judge ¹
JAMES R. COOPER	Judge ²
LAWSON CLONINGER	Judge ³
DONALD L. CORBIN	Judge ⁴
MELVIN MAYFIELD	Judge ⁵
TOM GLAZE	Judge ⁶

OFFICERS

STEVE CLARK	Attorney General
DONA L. WILLIAMS	Clerk
JACQUELINE S. WRIGHT	Librarian
CLYDE DICKENS CALLIOTTE	Reporter of Decisions

¹District 1.

²District 2.

³District 3.

⁴District 4.

⁵District 5.

⁶District 6.

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Rule 21

Rules of the Arkansas Supreme Court and Court of Appeals

OPINIONS

1. All signed opinions of the Supreme Court shall be designated for publication.

2. Opinions of the Court of Appeals may be in conventional form or in memorandum form. They shall be filed with the Clerk. The opinions need not contain a detailed statement of the facts, but may set forth only such matters as may be necessary to an understandable discussion of the errors urged. In appeals from decisions of the Arkansas Board of Review in unemployment compensation cases when the Court finds the decision appealed from is supported by substantial evidence, that there is an absence of fraud, no error of law appears in the record and an opinion would have no precedential value, the order may be affirmed without opinion.

3. Opinions of the Court of Appeals which resolve novel or unusual questions will be released for publication when the opinions are announced and filed with the Clerk. The Court of Appeals may consider the question of whether to publish an opinion at its decision-making conference and at that time, if appropriate, make a tentative decision not to publish. Concurring and dissenting opinions will be published only if the majority opinion is published. All opinions that are not to be published shall be marked, Not Designated For Publication.

4. Opinions of the Court of Appeals not designated for publication shall not be published in the official reports and shall not be cited, quoted, or referred to by any court or in any argument, brief, or other materials presented to any court (except in continuing or related litigation upon an issue such as *res judicata*, collateral estoppel, or law of the case). Opinions not designated for publication shall be listed in the Arkansas Reports by case number, style, date, and disposition.

5. Copies of All Opinions Available. — In every case the Clerk will furnish without charge one typewritten copy of all of either court's published or unpublished opinions in the case to counsel for every party on whose behalf a separate brief was filed. The charge for additional copies is fixed by statute.

OPINIONS NOT DESIGNATED FOR PUBLICATION

- Aikman *v.* Maryland Casualty Co., CA 84-201 (Glaze), affirmed February 13, 1985.
- Alexander *v.* Alexander, CA 84-432 (Per Curiam), Motion to Supplement the Record granted March 13, 1985.
- Anderson *v.* Hunter, CA 84-232 (Glaze), affirmed March 6, 1985.
- Arkansas State Highway Comm'n *v.* Good, CA 84-239 (Cloninger), affirmed April 3, 1985.
- B. J. McAdams, Inc. *v.* Geaslin, CA 84-193 (Cooper), affirmed February 27, 1985.
- Bearden *v.* Taylor, CA 84-311 (Cooper), affirmed April 24, 1985.
- Beverly Enterprises *v.* Bryant, CA 84-321 (Cracraft), affirmed February 27, 1985.
- Birts *v.* State, CA CR 84-186 (Glaze), affirmed March 20, 1985.
- Blackmon *v.* State, CA CR 84-218 (Corbin), affirmed April 10, 1985.
- Boyd *v.* State, CA CR 84-187 (Per Curiam), affirmed February 27, 1985.
- Brown *v.* State, CA CR 84-194 (Cloninger), affirmed April 24, 1985.
- Brown & Root, Inc. *v.* Thomas, CA 84-317 (Cracraft), affirmed March 6, 1985.
- Cates *v.* Robinson, CA 84-274 (Cracraft), affirmed April 24, 1985.
- Caudle *v.* Meyer, CA 84-358 (Cooper), affirmed March 27, 1985.
- Cavanaugh *v.* Pickney, CA 84-219 (Glaze), affirmed February 27, 1985.
- Chancellor *v.* State, CA CR 84-62 (Cloninger), affirmed February 27, 1985.
- City of North Little Rock *v.* Davis, CA 84-244 (Mayfield), affirmed March 20, 1985.
- Clark *v.* State, CA CR 84-174 (Cooper), affirmed April 10, 1985.
- Cottrell *v.* Valentine, CA 84-389 (Cracraft), affirmed March 20, 1985.
- Crockett *v.* State, CA CR 84-184 (Cracraft), affirmed February 27, 1985.

- Davis v. Davis*, CA 84-93 (Mayfield), affirmed February 13, 1985.
- Dodd v. Dodd*, CA 84-275 (Corbin), affirmed April 3, 1985.
- Easterling v. Anchor Paint Mfg. Co.*, CA 84-235 (Glaze), affirmed March 13, 1985.
- Eddington v. Brown Jordan Co.*, CA 84-362 (Cooper), affirmed February 20, 1985.
- Errickson v. Koolvent Aluminum Awning Co.*, CA 85-7 (Corbin), affirmed April 17, 1985.
- Fowler v. Fowler*, CA 83-428 (Per Curiam), opinion withdrawn and appeal dismissed February 27, 1985.
- Gleghorn's Custom Butchering v. Mask*, CA 84-332 (Cloninger), affirmed April 3, 1985.
- Glover v. State*, CA CR 84-211 (Mayfield), affirmed April 10, 1985.
- Greenberg v. State*, CA CR 84-190 (Cracraft), affirmed March 20, 1985.
- Gwatney v. Morgan*, CA 84-229 (Cooper), affirmed March 20, 1985.
- Hale v. State*, CA CR 84-170 (Cracraft), reversed and remanded February 13, 1985.
- Hampton v. State*, CA CR 84-177 (Mayfield), affirmed February 20, 1985.
- Harris v. Brookland School District*, CA 84-245 (Glaze), reversed March 20, 1985.
- Harvey v. State*, CA CR 84-188 (Glaze), affirmed April 24, 1985.
- Hendrix v. Angelica Island Corp.*, CA 84-310 (Glaze), affirmed February 13, 1985.
- Hollowell v. State*, CA CR 84-168 (Corbin), affirmed February 27, 1985.
- Hoover v. Hoover*, CA 84-231 (Cloninger), affirmed March 20, 1985.
- Jackson v. Jackson*, CA 84-204 (Cloninger), affirmed February 20, 1985.
- Johnson v. State*, CA CR 84-193 (Cooper), affirmed March 13, 1985.
- Kan-Ark Industries, Inc. v. Industrial, Inc.*, CA 84-313 (Corbin), reversed and remanded April 24, 1985.
- Kelleher v. Crane Co.*, CA 83-357 (Per Curiam), Appellant's Motion to Substitute Transcript or in the alternative Motion to Withdraw as Counsel denied February 13, 1985.

- Kendrick *v.* State, CA CR 84-201 (Glaze), reversed and remanded April 17, 1985.
- Kingsbury *v.* Kingsbury, CA 84-213 (Cloninger), affirmed February 13, 1985.
- Land O'Frost of Arkansas, Inc. *v.* Director of Labor, E 84-103 (Cracraft), affirmed February 20, 1985.
- Lewis *v.* State, CA CR 84-166 (Cloninger), affirmed March 6, 1985.
- Loveday *v.* Coleman, CA 84-224 (Cloninger), affirmed March 20, 1985.
- Loveless *v.* Coffield, CA 84-211 (Mayfield), affirmed March 27, 1985.
- McBride *v.* McBride, CA 84-290 (Corbin), affirmed April 3, 1985.
- McIntosh *v.* Jones, CA 84-260 (Cracraft), affirmed March 27, 1985.
- Marks *v.* Atkins, CA 84-195 (Cloninger), reversed and dismissed March 20, 1985.
- Mason *v.* State, CA CR 84-160 (Cooper), affirmed March 20, 1985.
- Maxwell *v.* State, CA CR 84-199 (Cooper), affirmed March 27, 1985.
- Mickens *v.* State, CA CR 84-179 (Mayfield), affirmed March 20, 1985.
- Mitcham *v.* State, CA CR 84-195 (Mayfield), affirmed March 20, 1985.
- Monroe Motors, Inc. *v.* Cars, Inc., CA 84-223 (Cracraft), affirmed March 6, 1985.
- Morris *v.* State, CA CR 84-152 (Per Curiam), affirmed February 13, 1985.
- Nalley *v.* State, CA CR 84-163 (Corbin), reversed and remanded March 27, 1985.
- Nelson *v.* State, CA CR 84-106 (Cloninger), affirmed March 6, 1985.
- Narem *v.* APAC-Tennessee, Inc., CA 84-396 (Cracraft), affirmed April 24, 1985.
- Ozark Gas Transmission System *v.* Griffin, CA 84-320 (Corbin), affirmed April 24, 1985.
- Phillips *v.* Hudson, CA 84-382 (Mayfield), affirmed March 27, 1985.
- Phillips *v.* State, CA CR 84-198 (Corbin), affirmed March 27, 1985.

- Pickens *v.* Stroud, CA 84-196 (Corbin), affirmed March 6, 1985.
- Pulpwood *v.* Norwood, CA 84-384 (Cloninger), affirmed April 17, 1985.
- Rauser *v.* Steele, CA 84-273 (Corbin), affirmed March 20, 1985.
- Reynolds *v.* State, CA CR 84-200 (Cloninger), affirmed March 27, 1985.
- Rice *v.* SD Leasing, Inc., CA 84-237 (Glaze), affirmed March 20, 1985.
- Richardson *v.* Hillis, CA 84-293 (Cracraft), April 3, 1985.
- Riley, Inc. *v.* McDaniel, CA 84-339 (Cracraft), reversed and dismissed February 13, 1985.
- Rose *v.* State, CA CR 84-97 (Cloninger), affirmed February 20, 1985.
- Rutherford *v.* State, CA CR 84-191 (Cracraft), affirmed April 24, 1985.
- Small *v.* Empire Gas Corp., CA 84-258 (Glaze), affirmed March 27, 1985.
- Smith *v.* Jones, CA 84-238 (Cooper), affirmed March 27, 1985.
- Spinks *v.* Spinks, CA 84-280 (Cracraft), affirmed April 3, 1985.
- Sutterfield *v.* Sutterfield, CA 84-207 (Corbin), affirmed February 20, 1985.
- Tatum *v.* State, CA CR 84-175 (Corbin), affirmed March 20, 1985.
- Thomas *v.* State, CA CR 84-130 (Mayfield), affirmed February 20, 1985.
- Thorn *v.* Shelva-Jameau Corp., CA 84-227 (Cooper), affirmed March 13, 1985.
- Tidwell *v.* Maybelline Co., CA 84-308 (Cloninger), affirmed in part, reversed and remanded in part February 20, 1985.
- Timmons *v.* State, CA CR 84-142 (Per Curiam), affirmed February 13, 1985.
- Wilcox *v.* Safely, CA 84-271 (Mayfield), reversed and remanded April 24, 1985.
- Wilson *v.* State, CA CR 84-221 (Mayfield), affirmed April 24, 1985.
- White Oak Package Store *v.* Eaves, CA 84-366 (Corbin), affirmed February 13, 1985.

CASES AFFIRMED BY THE ARKANSAS COURT OF
APPEALS WITHOUT WRITTEN OPINION
PURSUANT TO RULE 21(2), RULES OF THE
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Bounds *v.* Director of Labor, E 84-109, February 20, 1985.
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Moncrease *v.* Director of Labor, E 84-132, February 20, 1985.
Primm *v.* Director of Labor, E 84-149, April 3, 1985.
Pritchett *v.* Director of Labor, E 84-178, April 3, 1985.
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Rector Sportswear Corp. *v.* Director of Labor, E 84-142,
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